

Access to effective remedies: The asylum-seeker perspective

Thematic Report

The report addresses matters primarily related to the right to asylum (Article 18), the protection in the event of removal, expulsion or extradition (Article 19) and the right to an effective remedy and fair trial (Article 47) falling under the Chapters II 'Freedoms' and VII 'Justice' of the Charter of Fundamental Rights of the European Union.

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Thematic Report

Foreword

Since the entry into force of the Treaty of Amsterdam in May 1999, important steps have been made towards the creation of a Common European Asylum System. Five pieces of EU legislation were adopted between 1999 and 2005. To further a higher degree of harmonisation and better standards of international protection across the Union, the European Commission has presented proposals to amend four of the existing five pieces of legislation relating to asylum, namely the Dublin II Regulation, the Reception Conditions Directive, the Qualification Directive and the Asylum Procedures Directive. This report specifically relates to the Asylum Procedures Directive.

The 2005 Asylum Procedures Directive lays down minimum standards for asylum procedures in the European Union. It provides for a duty to issue decisions in writing (Article 9), to inform applicants about the asylum decision and on how to appeal (Article 10), it regulates legal assistance (Article 15) and sets minimum standards relating to effective remedies (Article 39). In Article 23, the directive also balances expediency of procedures with fairness.

Drawing on evidence from interviews with almost 900 asylum seekers, this report aims to provide a picture about the extent to which asylum seekers in the European Union have access to effective remedies as guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union.

This report proposes how some of the issues raised by asylum seekers could be addressed. Some relate directly to amendments proposed by the European Commission in October 2009 in the recast Asylum Procedures Directive, which, if adopted, could contribute considerably to resolve a number of gaps that emerged from the research.

The European Union Agency for Fundamental Rights (FRA) presented this report at the Ministerial Conference on Asylum organised by the Belgian Presidency on 13-14 September 2010. The timing of this report's presentation was intended to allow for the experiences of and suggestions by asylum seekers to inform the work of policy makers entrusted with the creation of a Common European Asylum System.

Morten Kjaerum
Director

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Executive summary

In Article 47, the Charter of Fundamental Rights of the European Union guarantees the right to an effective remedy to everyone. European Union law requires that asylum seekers shall have the right to request a review of their asylum decision before a court or tribunal (Article 39 of the Asylum Procedures Directive).

This report presents asylum-seeker experiences in submitting an appeal against a negative decision by national asylum authorities. While documenting good practices, this research has also found that several obstacles make it difficult for asylum applicants to access effective remedies.

Language and communication barriers emerge as recurrent findings of this research which affects asylum seekers' communication with asylum authorities as well as with lawyers. These barriers also constitute a practical obstacle to lodge an appeal, as in most countries the submission has to be made in the host country language.

Although applicants are normally aware about the decision taken by the asylum authorities with respect to their claim, information on the reason for rejection and details on how to submit an appeal are not systematically understood. In particular, applicants are not always aware about where they can find legal assistance, as this is rarely communicated with the rejection decision.

In some countries, asylum seekers face practical obstacles to submit an appeal (such as difficulties in accessing the relevant offices), whereas in others short time limits make the submission of an appeal a race against time. One of the main concerns of rejected applicants is to find a competent and reliable lawyer who assists them in lodging an appeal. Increasingly complex asylum procedures make it difficult for applicants to submit a well-reasoned appeal without the help of a lawyer. Free legal assistance appears, however, as not being always available.

The research also found that in several EU Member States asylum seekers play a limited role or no role at all during the hearing by the appellate body; in some Member States, however, most asylum seekers are heard by the appeal authority.

Based on the findings of this research, the European Union Agency for Fundamental Rights (FRA) has formulated the following opinions for policy makers.

Opinions

The following opinions summarise the FRA evidence-based advice on key policy issues identified in the field of asylum procedures. They are also reproduced at the end of each chapter, whereby the opinions of the first three chapters are included in a consolidated form.

Information on the decision taken and how to appeal

In accordance with Article 9.1 and 9.2 of the Asylum Procedures Directive, asylum decisions should contain all the necessary information to equip the applicant to formulate a well-substantiated appeal and should always be provided in writing to applicants or their legal representatives.

As good practice, where possible, asylum decisions as well as information on how to appeal should also be communicated in person by arranging a meeting where the decision is explained to the asylum seeker in a language s/he understands. Information on appeals should include all practical details needed to lodge an appeal, such as the name of the competent appeal body, the place where the appeal has to be submitted, applicable time lines, as well as information on where to find legal aid.

Translation in a language asylum seekers understand

Asylum decisions should be provided to applicants in a language they understand, which should be elevated in law and in practice to become the European standard for translation (unless the applicant is represented by a lawyer). As suggested by the European Commission in its recast proposal to Article 10.1(e) of the Asylum Procedures Directive, the availability of free legal assistance should not affect the right to be informed.

Although not formally required by the directive, to ensure effective communication, Member States are encouraged to provide a written translation at least of the type of decision taken and of the practical details on how to appeal in a language the asylum seeker understands.

Reasonable time limits

Time limits to submit an appeal should be reasonable. They must not render the lodging of an appeal impossible or extremely difficult. The FRA therefore encourages the Council and the European Parliament to support the amendments proposed by the European Commission to Article 39 of the Asylum Procedures Directive as these aim at filling existing gaps relating to the right to an effective remedy, including in relation to time limits.

Effective legal assistance

The right to be assisted free of charge by a lawyer is a precondition to ensure effective access to justice, particularly in light of the complexity of asylum procedures. Such a right should therefore not be subject to any limitations, except for a means test and to modalities for processing requests, which are necessary to ensure an effective administration of the mechanism to provide free legal aid. The Council and the Parliament are therefore encouraged to support the amendments proposed by the European Commission to Article 15 of the Asylum Procedures Directive.

In addition, the capacity to provide free legal assistance should be re-assessed in each Member State in light of the actual needs for it, so as to ensure that the right to free legal assistance is not only available in theory but also accessible in practice. When discussing funding for legal aid programmes, Member States as well as legal aid providers are encouraged to include funds for interpretation in order to enable communication between the asylum seeker and his or her lawyer.

Hearing by appellate body

Appellate bodies in Member States are encouraged to consider holding a hearing in the presence of the applicant whenever the facts of the case are disputed. When the applicant is heard, this should be done in an atmosphere of trust and confidentiality, so as to support the asylum seeker to speak about his or her personal experiences. Travel costs to attend hearings should be covered by public funds.

Introduction

Charter of Fundamental Rights of the European Union

Article 18

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention [...] and the Protocol [...] relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union [...].

This report presents the asylum-seeker experiences in submitting an appeal against a negative decision by national asylum authorities.

It complements a second report on the duty to inform applicants on the asylum procedure. The two reports are the outcome of the FRA research project on access to justice for asylum seekers. For each country, an individual factsheet is available online at the FRA website, which provides statistical information and summarises domestic legal provisions on issues covered in the two reports. It is the second FRA research project with asylum applicants, following the one on separated children seeking asylum, the summary report of which was published in April 2010.¹

This report also intends to complement recent comparative studies, including the United Nations High Commissioner for Refugees (UNHCR) study on asylum procedures, which outline the legal and policy framework or describe existing practices against which the views of asylum seekers expressed in the current report can be contextualised.²

- 1 FRA, Separated asylum-seeking children in European Union Member States - Summary report, Luxembourg, Publications Office of the European Union, April 2010. See also the comparative overview report, FRA, Separated, asylum-seeking children in European Union Member States, Luxembourg: Publications Office, 2010; both reports are available online on the FRA website at: http://fra.europa.eu/fraWebsite/research/publications/publications_en.htm (all hyperlinks in this report have been accessed on 24 August 2010).
- 2 See United Nations High Commissioner for Refugees (UNHCR), *Improving asylum procedures: Comparative analysis and recommendations for law and practice*, UNHCR research project on the application of key provisions of the Asylum Procedures Directive in selected Member States, March 2010 (hereinafter referred to as 'UNHCR Study'). The UNHCR Study covers 12 European Member States including Belgium, Bulgaria, the Czech Republic, Finland, France, Germany, Greece, Italy, the Netherlands, Slovenia, Spain, and the UK. In addition, the FRA research also intends to complement the publication by the Intergovernmental consultations on migration, asylum and refugees (IGC), *Asylum Procedures, Report on Policies and Practices in IGC Participating States*, 2009, as well as the European Council on Refugees and Exiles (ECRE) *the Survey of legal aid for asylum seekers in Europe*, Brussels, October 2010, available at: www.ecre.org/resources/Policy_papers.

Traditionally, asylum policy is only rarely informed by assessments of those who are most affected by it: the asylum seekers themselves. Asylum-seeker views and experiences form the backbone of this report. For this project, 877 asylum seekers have been interviewed, either as part of 142 focus group (844 persons) or individually (33 persons) where it was not possible to identify a sufficient number of homogenous respondents to form a group. Information was collected from asylum seekers in all 27 European Union Member States (EU27). More information on the composition of the asylum seekers interviewed and the methodology can be found in Annex 1, Figures A1-A4.

Most of the asylum seekers interviewed came from Afghanistan, Somalia, the Russian Federation and Iraq, although in total 65 different nationalities were covered by the research. In 2009, more than 260,000 asylum applications were made in the European Union and some 78,000 were granted protection.³ Statistical information on decisions taken in 2009 for applicants from Afghanistan, Somalia and Iraq is included in Annex II.

Direct quotes from respondents are used in the report to illustrate some of the most relevant findings.⁴ Where possible, asylum-seeker statements have been analysed with information provided by national asylum authorities (collected through a questionnaire) or obtained from other public sources, including national legislation. Often, however, no comprehensive information is available on how a particular issue is managed in practice in the different countries. In these cases, the report portrays the experiences of respondents without aiming to provide a full picture of the situation.

Children were not included in the research and consequently the report does not contain any considerations with regard to specific safeguards for children. These are part of the above-mentioned project on separated children seeking asylum in the European Union Member States.

Except for the Netherlands, the field research was carried out by the FRA RAXEN network of National Focal Points (NFPs), with the support of national asylum authorities, the UNHCR and the European Council on Refugees and Exiles (ECRE) network. The European Commission, UNHCR and ECRE commented on the draft report, as well as 23 out of the 27 Member States with which the report was shared in draft form.

- 3 Eurostat, News release, 18 June 2010, STAT/10/89, available online at: www.europa.eu/rapid/pressReleasesAction.do?reference=STAT/10/89&
- 4 Normally, country of origin, sex and Member State are mentioned, unless by providing this information the source could be identified. In addition, the ethnic origin of respondents is indicated in some case.

1. How asylum seekers learn about the decision

Asylum Procedures Directive

Article 9

1. Member States shall ensure that decisions on applications for asylum are given in writing.
2. Member States shall also ensure that, where an application is rejected, the reasons in fact and in law are stated in the decision [...].

This chapter reviews how asylum seekers receive information that their application has been rejected. The language in which such information is provided is examined in Chapter 2.

The provision of a decision in writing is a pre-condition to enable the applicant to decide whether to file an appeal and, if so, to formulate adequately the submission.

Pursuant to Article 9 of the Asylum Procedures Directive,⁵ rejection decisions must contain the reasoning in fact and in law. Taking into account that decisions are to be taken individually (Article 8.2(a) Asylum Procedures Directive), the reasoning should be based on the specific circumstances of each individual case. A well-reasoned decision requires that the assessment of relevant evidence, including country of origin information, be explained.

The UNHCR study on the Asylum Procedures Directive⁶ indicates wide divergence in the structure and content of first instance asylum decisions. Practices documented by UNHCR ranged from negative decisions consisting of only three standard paragraphs in Greece to decisions stating briefly the reasons, but with more information available on file – such as in Italy and Spain – and to more comprehensive decisions assessing the evidence used as in the United Kingdom (UK).⁷

The research confirmed that asylum seekers are normally informed about the rejection of their claim directly by the authorities. This is done in writing, either in person or by (registered) mail. Information is obtained directly or through the lawyer when asylum seekers have one.

Asylum seekers described the rejection letter in different ways as the following examples illustrate. In Greece, the negative first instance decision was referred to as the ‘white paper’ (thus suggesting a one-page document with limited or no assessment of the evidence used). In France and Ireland, some asylum seekers described a negative decision being a “thick pack of papers” which contains “all the documents, including a transcript of the interview” (Sri-Lanka, male, France). In these two countries, some asylum seekers said that they understand whether the decision is positive or negative based on how thick the letter is that they receive; positive decisions being usually sent without large attachments.

While normally no differences in treatment between men and women were noted, in Hungary two female applicants – from Afghanistan and Kosovo – reported that the decision was orally communicated by the authorities only to their husbands and not to them.

In a few countries, the research documented notification practices which appear, at least at first sight, to be inadequate, create misunderstandings or raise confidentiality concerns. In Greece, asylum seekers received contradictory messages as they were given the rejection letter together with the documents entitling them to stay in the country (the ‘pink paper’):

“The police gave me the pink card and the rejection the same day.” (Afghan, male, Greece)

“When they gave me the pink card, they gave me the white paper. They did not tell me it was a negative decision.” (Ethiopian, female, Greece)

Some respondents did not realise that they received a negative decision and one missed the deadline for appeal.

⁵ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

⁶ UNHCR Study, pp. 13–14.

⁷ See UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice – Detailed Research on Key Asylum Procedures Directive Provisions*, March 2010 (hereinafter referred to as ‘UNHCR Detailed Research’), pp. 15–16, 18–20 and 24.

In Cyprus and more frequently in Spain, asylum seekers mentioned that they were informed that their application was rejected only when they inquired with the authorities or approached them to renew their residence cards. In Portugal and Romania, some asylum seekers raised the fact that they were asked to sign the receipt of written documents without understanding that it was a negative asylum decision. In two reception facilities in the Czech Republic and Italy, asylum seekers reported seeing their name on a list of rejected applicants, which was posted on the notice board (in one case in the canteen of the reception centre) before they were officially notified. Such practice appears problematic in light of the right to privacy.

FRA Opinion

In accordance with Article 9.1 and 9.2 of the Asylum Procedures Directive, asylum decisions should contain all the necessary information to equip the applicant to formulate a well-substantiated appeal and should always be provided in writing to applicants or their legal representatives.

2. Translation of the decision

Asylum Procedures Directive

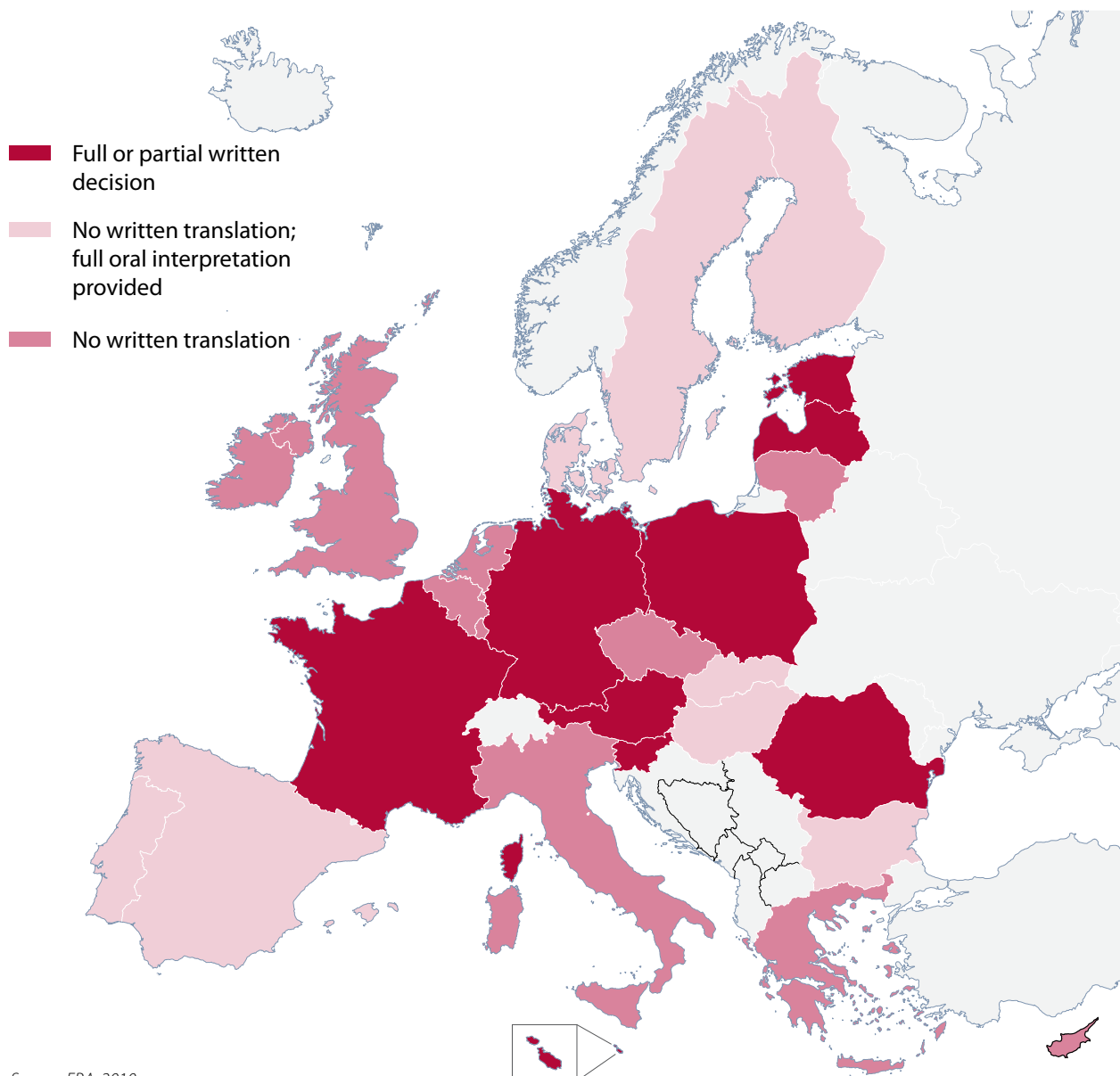
Article 10.1(e)

[Applicants for asylum] shall be informed of the result of the decision by the determining authority in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor and when free legal assistance is not available. [...]

Article 10.1(e) of the Asylum Procedures Directive requires European Union Member States to inform applicants of the result of the asylum decision in a language they may reasonably be supposed to understand. It also allows, however, departing from such duty, when free legal assistance is available. The European Commission suggested deleting such exception in its recast proposal.⁸

⁸ See European Commission, *Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast)*, COM(2009) 554 final, Brussels, 21 October 2009, proposed amendments to Articles 9 and 10 (new Articles 10 and 11).

Figure 1: Availability of written translation of asylum decisions, EU27



Source: FRA, 2010

Although the Asylum Procedures Directive does not oblige states to provide a written translation of the decision, some countries do. According to information received from national asylum authorities, Estonia and Latvia translate the full decision if the applicant is not represented by a lawyer. In addition, as shown in Figure 1, a number of countries provide a translation of the decision taken, that is, whether refugee or another status is granted. In other countries, the decision is usually communicated in person and, if necessary, full interpretation is provided.⁹

Only a small number of the asylum seekers covered by the research (mainly in Belgium, France, Spain and the UK) spoke the host country language to a sufficient degree to understand a negative asylum decision.

For all other asylum seekers, without translation or interpretation, it was difficult to understand if their application had been rejected and, if so, why. In several cases, respondents expressed their frustration for not understanding the content of the decision, as the following two examples illustrate:

“When a negative decision comes, then you want to know why. You want to read the justification and then you see it’s only in Polish.” (Chechen from the Russian Federation, male, Poland)

“The reason why you are rejected and everything, they write it in Greek! Nobody translated it to me. They said: ‘we cannot translate.’” (Democratic Republic of the Congo, male, Cyprus)

In countries, such as Bulgaria, Finland or Hungary, where the full text of the decision including the reasons for rejection is interpreted orally in full, asylum seekers generally appeared to be better informed of the content of the decision. In Finland, for example, applicants appreciated the fact that they were called to the local police station where an interpreter translated the full decision, including the reasons for rejection, and provided them with information on how to appeal a negative decision. While oral interpretation is generally appreciated by asylum seekers, there may be an issue with the quality of interpretation:

“There are many translators who are not good[...]. I think it is wrong if Afghans are getting Iranian translators and Iranians are getting Afghan translators[...] they say they understand the applicants even in cases they don’t understand the applicants.” (Iranian, female, Denmark)

Only few persons who were interviewed in countries which translate in writing at least part of the decision said that they did not understand which decision they received. These concerned primarily applicants who did not speak any of the languages for which a translation is foreseen, as illustrated by the following examples. A Pakistani applicant in Poland was provided with a letter in Hindi, which he did not understand. While, in Poland, Russian translations are normally provided, two asylum seekers from Central and East Africa reported that they received the rejection letter only in Polish. An Ethiopian woman in Malta reported having received a letter in Tigrinian, although she spoke Amharic. The language obstacle was solved by calling an interpreter from the Jesuit Refugee Service.

Where asylum procedure decisions or the reasons on which these are based are not translated, applicants resort to a variety of coping strategies. The most common is to rely on non-governmental organisations (NGOs). Where these exist, NGOs are the first port of call for asylum seekers who need an explanation of the content of the decision received in a foreign language. In France and in the Netherlands, for example, many asylum seekers reported opening rejection letters systematically in reception centres with their social workers (in France often with an interpreter on the phone). Asylum seekers fully trusted the social worker:

“The social worker knows.” (Eastern Europe, female, France)

The research findings also indicate that where an NGO presence is weaker, such as in rural or remote areas (Carinthia in Austria or Radauti in Romania), asylum seekers appeared to face greater challenges in understanding the content of the decision. If they are in contact with lawyers, the latter may be asked to translate:

“I complained why it was written in Latvian, and then my representative made a translation for me.” (Central Asian national, male, Latvia)

Often, however, on receipt of the first negative decision, asylum seekers are not yet in contact with NGOs or lawyers. In this case, it is common to approach relatives, including children, as well as friends or other asylum seekers to translate the decision. As an illustration, in Sweden, one asylum seeker explained that he went to the local shop and asked a Swedish woman to translate for him. Such practice may expose applicants to new risks since confidential information contained in their files may be shared with unrelated persons. Finally, two applicants (in Lithuania and Romania) reported that they had to pay a professional interpreter for the translation of the negative decision as they did not have any other option.

⁹ This is the practice in Bulgaria, Denmark, Finland, Hungary, Portugal, Slovakia, Spain and Sweden. In some cases, however, this may depend on the availability of interpreters, as is the case in Spain, for example (see UNHCR Detailed Research, p. 50).

FRA Opinion

Asylum decisions should be provided to applicants in a language they understand, which should be elevated in law and in practice to become the European standard for translation (unless the applicant is represented by a lawyer). As suggested by the European Commission in its recast proposal to Article 10.1(e) of the Asylum Procedures Directive, the availability of free legal assistance should not affect the right to be informed.

Although not formally required by the directive, to ensure effective communication, Member States are encouraged to provide a written translation at least of the type of decision taken and of the practical details on how to appeal in a language the asylum seeker understands.

As good practice, where possible, asylum decisions as well as information on how to appeal should also be communicated in person by arranging a meeting where the decision is explained to the asylum seeker in a language s/he understands.

3. Information on how to appeal

Asylum Procedures Directive

Article 9.2

Member States shall also ensure that, where an application is rejected, the [...] information on how to challenge a negative decision is given in writing.

Article 10.1(e)

[...] The information provided [in a language that asylum seekers may reasonably be supposed to understand] shall include information on how to challenge a negative decision in accordance with the provisions of Article 9.2.

Information on how to appeal is normally included in the rejection decision. However, in order to be meaningful such information must not be of a generic nature but contain all the details required to lodge an appeal, such as applicable time lines and the name of the competent appeal body. This, as UNHCR has pointed out, is not always the case.¹⁰

Equally important is that information on how to appeal be translated into a language the asylum seeker understands. In the majority of countries, such information is provided to the applicant orally. A good practice in this regard is to complement this with a written translation of the instructions on appeals (including at least the name of the appellate body, time limit and place where the appeal has to be submitted), as is done, for example, in Austria, Estonia, Germany, Latvia, Poland, Romania, Slovenia or the UK.¹¹

In half of the countries surveyed, most respondents remembered that they received at least basic information on their right to appeal when they were given the negative decision. These countries include Austria, Bulgaria, the Czech Republic, Estonia, Finland, Germany, Hungary, Latvia, Malta, the Netherlands, Poland, Romania and Slovenia. With few exceptions, these countries all provide a written translation of the information on how to appeal or an oral interpretation of the full text of the negative decision. The latter is the case in Bulgaria, Finland and Hungary, according to responses received from asylum authorities. In other countries, social workers, friends or relatives often informed asylum seekers

about the practical steps for lodging an appeal and, more importantly, how to find legal aid.

In general, most asylum seekers interviewed were aware about their right to appeal a negative decision and of existing time lines, although the information provided was not always considered to be sufficient.

"If you are not satisfied, it is written that you can appeal but no information on how to get assistance to appeal."
(Eritrea, male, Malta)

A lack of information or confusion about existing time lines emerged, nevertheless, in several countries, including Cyprus, Greece, Italy, Lithuania, Portugal, Slovakia, Spain and Sweden. The need for appropriate advice on the appeal procedure, including applicable time limits, was particularly called for by respondents in Cyprus and Greece. In Greece, one respondent missed the deadline, while most asylum seekers reported that they only understood the need to appeal after having seen the Greek Council for Refugees. The least information on the right to appeal emerged from respondents in Spain, where several asylum seekers were not aware that they could appeal and others did not know the applicable time lines. In Denmark, several respondents were not aware that the decision by the Immigration Service will be reviewed automatically by the Refugee Appeals Board.

Finally, in some cases, messages encouraging applicants to leave the country were provided to respondents together with the negative decision, as the following examples illustrate. In Lithuania, an asylum seeker from a refugee-producing country recalled that a government official told him not to try to appeal as 95% of appeals are rejected. In Spain, an asylum seeker from the Ivory Coast reported that when he was presented with a negative decision, he was told that he should leave the country. It is the view of the FRA that information on the right to appeal should be provided in a neutral manner and not presented in a way that discourages asylum seekers to appeal.

FRA Opinion

Information on how to appeal should be provided in writing and in a language the asylum seeker understands and, where possible, also communicated orally (with the help of an interpreter if needed) when notifying the decision.

Information on appeals should include all practical details needed to lodge an appeal, such as the name of the competent appeal body, the place where the appeal has to be submitted, applicable time lines, as well as information on where to find legal aid.

¹⁰ See UNHCR Study, p. 20. According to the UNHCR Study, some countries do not specify the relevant appellate body, the applicable time limits or the practical steps that should be taken, such as in Italy or France where only a generic translation is provided of the comprehensive information available in French (UNHCR Study, p. 53).

¹¹ Information taken from the responses provided by national asylum authorities and verified with NGOs or UNHCR. For Slovenia, this information was provided by respondents and confirmed with the UNHCR Study (p. 49).

4. Time lines for appeal

Asylum Procedures Directive

Article 39.2

Member States shall provide for time-limits and other necessary rules for the applicant to exercise his/her right to an effective remedy pursuant to paragraph 1.

The Asylum Procedures Directive obliges Member States to provide for time limits for appeal. In its recast proposal, the European Commission made a number of suggestions to strengthen the right to an effective remedy, qualifying, among other things, that time limits should be reasonable and not render access to remedies impossible or excessively difficult.¹²

These suggestions should be seen against the background of currently existing time limits to file an appeal which, as indicated in the following paragraphs, can be rather short. Unless extremely effective mechanisms to provide immediate counselling, legal aid and language assistance are in place, and the submission

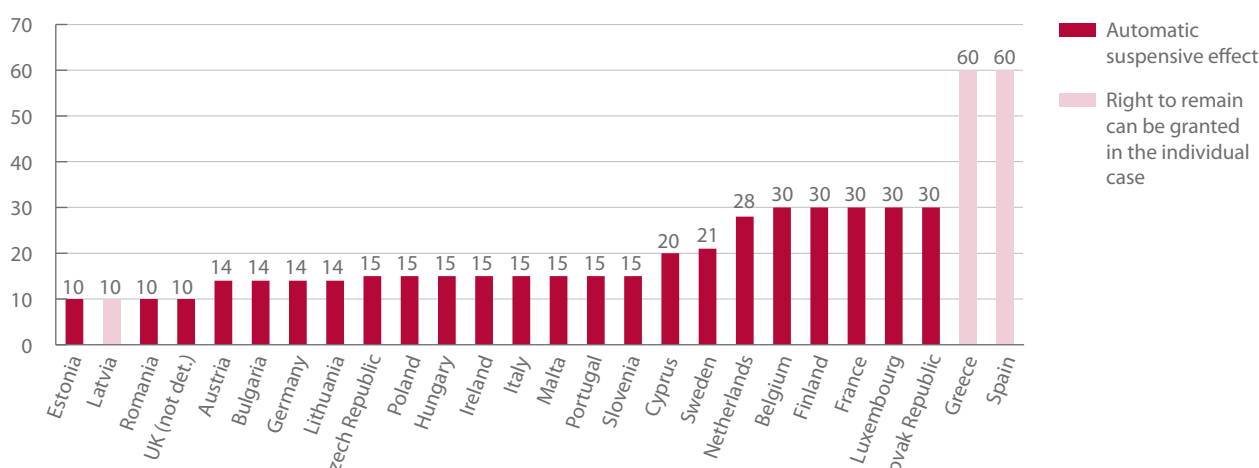
of supporting documents is also allowed after the formal submission, some of the shorter time limits may raise questions in light of the right to an effective remedy.

The time frame within which asylum seekers have to lodge an appeal can vary considerably. Figures 2 and 3 provide a broad picture of existing time lines in 26 EU Member States¹³ and on the right to remain in the country during the appeal procedure. The graphs do not intend to cover all different types of procedures that may exist at a national level, but only those that could be described as the regular or normal procedure and the accelerated procedure most commonly used.

12 See European Commission, COM(2009) 554 final, Brussels, 21 October 2009, amendments to Article 39 (new Article 41).

13 Denmark has not been included in the graphs since in a regular procedure the case is automatically referred by the Immigration Service to the Refugee Appeals Board (Aliens Act, Part VIII, Section 53a (1)). When the Immigration Service assesses an application to be manifestly unfounded, it automatically forwards its assessment to the Danish Refugee Council. If the Danish Refugee Council agrees, the claim will be rejected and may not be appealed. If it disagrees, the Immigration Service will refer the case to the Refugee Appeals Board for a final ruling (Aliens Act, Part VIIIa, Section 53b (1)).

Figure 2: Time limits for appeal – regular procedure, by country* (days)



Notes: * Denmark not included (see explanation in Footnote 13).

Time limits expressed in national law in weeks or months have been translated into days – seven and 30 days, respectively. Not all details are reflected (for example, whether it refers to working or effective days or on possible exceptions to the automatic suspensive effect of the appeal, such as in the case of national security reasons). In Italy and the UK, two deadlines apply, depending on whether the person is in detention – and, for Italy, in a reception centre – (Italy 15 days, UK 5 days) or not (Italy 30 days, UK 10 days). For the UK, the time lines for persons not detained and in Italy, those of applicants in reception facilities have been used for this graph.

Source: FRA, September 2010

For applications examined in the regular procedure, the time limits to lodge an appeal range from 10 days in Estonia, Latvia, Romania and the UK to two months in Greece and Spain.¹⁴ With the exception of Estonia, Greece and Spain, appellants are automatically granted the right to remain in the country during the appeal procedure.¹⁵

Most countries allow for the processing of certain types of asylum applications in an accelerated manner. This may include different types of claims, such as those deemed manifestly unfounded. Figure 3 provides a broad picture of existing time lines and the right to remain in accelerated procedures most commonly used, but not necessarily for admissibility procedures, Dublin II cases, border and subsequent applications, for which other deadlines may exist.¹⁶

14 The time lines shown in Figure 2 can be found in the following legislation: **Estonia**, Act on Granting International Protection to Aliens (2006), Chapter 2, Division 1, Art. 26(3); **Latvia**, Asylum Law 2009, Section 30(2); **Romania**, Law on Asylum in Romania (2006), Chapter V, Section 1, Art. 55(1); **UK**, The Asylum and Immigration Tribunal (Procedure) Rules 2005, Part 2, Art. 7 (1) (b); **Austria**, General Administrative Procedures Act, Part IV, Section 1, Art. 63(5); **Bulgaria**, Law on Asylum and Refugees (2002), Chapter 7, Section 1, Art. 87; **Germany**, Asylum Procedure Act Section 74(1); **Lithuania**, Law on the Legal Status of Aliens (2004), Chapter 10, Art. 138; **Poland**, Code on Administrative Procedures, Chapter 10, Art. 129(2); **Czech Republic**, Act on Asylum (1999), Chapter IV, Section 32, Art. 32(1); **Hungary**, Act on Asylum (2007), Chapter VIII, Art. 68; **Ireland**, Refugee Act, Section 13(4); **Malta**, Refugees Act (Chapter 420), Part II, Art. 7(2); **Portugal**, Act 27/2008 establishing conditions and procedures for granting asylum and subsidiary protection, Chapter III, Section III, Art. 30; **Slovenia**, Law on International Protection (2007), Chapter IX, Art. 74(2); **Cyprus**, Refugee Law (2000), Part V, Art. 28F(2); **Sweden**, Aliens Act (2005:716), Chapter 16, Section 10; **The Netherlands**, Aliens Act (2000), Section 69(1); **Belgium**, Aliens Act (1980), Art. 39/57; **Finland**, Act on Administrative Judicial Procedure 586/1996, Part II, Chapter 5, Section 22; **France**, Code de l'entrée et du séjour des étrangers et du droit d'asile – Livre VII, 2003, Art. L. 731-2; **Italy**, Decreto legislativo n.25, 28 January 2008, Art. 35(1); **Luxemburg**, Loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection (2006), Chapter 2, Art. 19(3); **Slovak Republic**, Law on Asylum (2002), Chapter 3, Art. 21; **Greece**, Art.46 Presidential Decree 18/1989, relating to the procedure before the Council of State; **Spain**, Law 12/2009 regulating the Right to Asylum and to Subsidiary Protection, Art. 29 and Law 29/1998 on the Contentious Administrative Jurisdiction, Art. 46.

15 For the legal source regulating the right to stay in the country during the appeals process, see the individual country factsheets available online at the FRA website at: www.fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub_asylum-seekers_en.htm.

16 The time limits given in Figure 3 can be found in the following legislation: **Romania**, Law on Asylum in Romania (2006), Chapter V, Section 3, Art.80(1), but a longer timeframe of five days applies in safe third country cases; **UK**, Section 8(1), Asylum and Immigration Tribunal (Fast Track Procedure Rules 2005); **Hungary**, Act on Asylum (2007), Chapter VIII, Art.53(3) concerning the preliminary assessment procedure; **Slovenia**, Law on International Protection (2007), Chapter IX, Art. 74(2); **Poland**, Law on Granting Protection to Aliens; Article 34.2(4); **Austria**, Asylum Act Section 22(12); **Bulgaria**, Law on Asylum and Refugees (2002), Chapter 7, Section 1, Art. 84; **Germany**, Asylum Procedure Act, Art. 36(3) (1); **Netherlands**, Aliens Act (2000), Section 69(1); **Portugal**, Act 27/2008 establishing conditions and procedures for granting asylum and subsidiary protection, Chapter III, Section I, Art. 22; **Cyprus**, Refugee Law (2000), Part V, Art. 28F (1); **Estonia**, Act on Granting International Protection to Aliens (2006), Chapter 2, Division 1, Art. 26(3); **Ireland**, Refugee Act, Section 13(5) – the Minister may however channel certain applications

The difference in time limits is even greater when compared with the regular procedure; it ranges from two days in Romania or the UK to two months in Greece. In half of the EU Member States, the right to remain in the country during the review is only conferred by the appellate body in the individual case.

Except in Greece, Italy, Lithuania, Portugal, Slovakia, Spain and Sweden (and in Denmark where the appeal is submitted ex officio), respondents were generally aware of the time lines provided by law to lodge an appeal. When asked whether they found these time lines sufficient, responses varied considerably, although there appears to be a general awareness that one needs to act quickly:

"We didn't attempt to have [the decision] translated, because we only had 14 days to lodge an appeal. So we wanted to fit in that time, and a lawyer also needs several days to prepare the appeal. If he also had to prepare the translation, it would take even longer."
(Chechen from the Russian Federation, male, Poland)

In most countries, appeals were prepared by lawyers and sometimes also submitted by them.

"All was written by a lawyer. Very fast and on his own."
(Central Asian, male, Czech Republic)

Often, asylum seekers played only a minor role in the process, the filing of an appeal being perceived as a routine administrative task to be undertaken by the lawyer. Such dependency from lawyers, combined with the complexity of the asylum procedure, may explain the limited concern expressed by asylum seekers, in spite of frequently short deadlines to lodge an appeal, as shown in Figures 2 and 3.

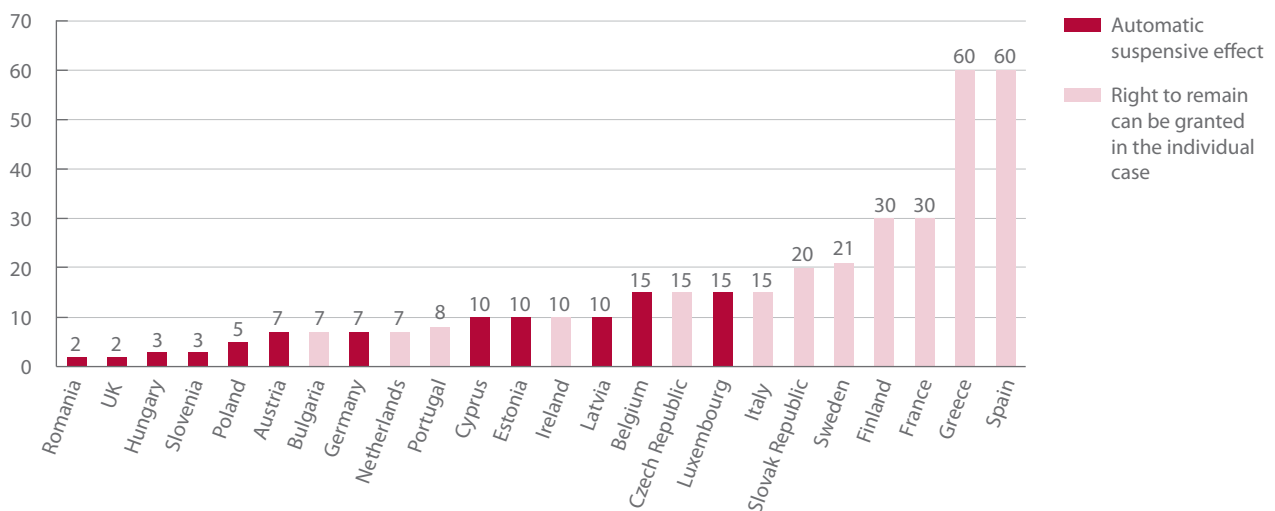
through a faster procedure with a deadline of only four working days; **Latvia**, Asylum Law 2009, Section 30(2); **Belgium**, Aliens Act (1980), Art. 39/57; **Czech Republic**, Act on Asylum (1999), Chapter IV, Section 32, Art. 32(2) (Before the judgment of the Constitutional Court no. 9/2010 Coll. came with the effect from January 2010, the decisions on manifestly unfounded applications could be appealed against to the regional court within 7 days of serving the decision); **Luxemburg**, Droit d'asile et formes complémentaires de protection (2006), Chapter 2, Art. 20(4); **Italy**, Decreto legislativo n.25, 28 January 2008, Art. 35(1) - the 15 days time line for detained applicants or applicants placed in a reception center without automatic suspensive effect as per Article 35(7)-(8) of above-mentioned decree has been used; **Slovak Republic**, Law on Asylum (2002), Chapter 3, Art. 21; **Sweden**, Aliens Act (2005:716), Chapter 16, Section 10; **Finland**, Act on Administrative Judicial Procedure 586/1996, Part II, Chapter 5, Section 22; **France**, Code de l'entrée et du séjour des étrangers et du droit d'asile – Livre VII, 2003, Art. L. 731-2; **Greece**, Art.46 Presidential Decree 18/1989, relating to the procedure before the Council of State; **Spain**, Law 12/2009 regulating the Right to Asylum and to Subsidiary Protection, Article 21(4).

Most concerns on short time lines to appeal were expressed by asylum seekers in Belgium, Cyprus, Hungary, Germany and the UK. Asylum seekers in these countries had faced difficulties in finding a lawyer or had to change lawyer to lodge an appeal. In Sweden, most asylum seekers believed that they had two weeks to lodge an appeal instead of three weeks as provided for by law, which they found too short in order to procure supporting documents from their country of origin. In Finland, in spite of a 30-day deadline, some applicants found it difficult to receive an appointment with a lawyer and sometimes ended up submitting the appeal at the very last moment, which generated anxiety. Several asylum seekers in the Netherlands reported the same experience.

FRA Opinion

Time limits to submit an appeal should be reasonable. These limits must not render the lodging of an appeal impossible or extremely difficult. The FRA therefore encourages the Council and the European Parliament to support the amendments proposed by the European Commission to Article 39 of the Asylum Procedures Directive as these aim at filling existing gaps relating to the right to an effective remedy, including in relation to time limits

Figure 3: Time limits for appeal – accelerated procedure, by country* (days)



Notes: * Denmark not included (see explanation in Footnote 13).

Time limits expressed in domestic legislation in weeks or months have been translated into days (seven and 30 days, respectively). Not all details are reflected (for example, whether it refers to working or effective days or on possible exceptions to the automatic suspensive effect of the appeal, such as in case of national security reasons). In some countries, various accelerated procedures exist with different time lines as described in Footnote 16 and the country factsheets available online at the FRA website.¹⁷

Source: FRA, September 2010

17 See www.fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub_asylum-seekers_en.htm.

5. Practical obstacles to submit an appeal

Asylum Procedures Directive

Article 39.1

Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal [...].

This chapter reviews different practical obstacles reported by asylum seekers as important barriers to access appeals procedures. It first touches briefly on the mental state of applicants, looks then at language issues and the need to procure supporting documents. Finally, physical access to the location where appeals have to be submitted and costs are also covered. Access to legal aid is dealt with separately in Chapter 6 below.

Although the research was not designed to ascertain signs of mental distress, in several countries references to mental health considerations were made by respondents as illustrated by the following examples. In one focus group, in Denmark, a woman revealed that all participants were taking anti-depressive medicines. In Finland, Somali women stressed the anxiety caused by not knowing whether one will be allowed to stay or not:

"I suffered from anxiety and insomnia the whole time during the appeal process. It is very difficult for nerves, when you do not know what is going to happen to you, when you do not know whether or not you are going to be deported the next day." (Somali, female, Finland)

A few respondents in Ireland considered the time waiting for a decision as particularly stressful even if their cases had been pending only for a few months. The mental state of applicants can have an impact on their ability to understand what they have to do in order to enjoy their appeal rights, as mentioned by African women in Hungary.

Normally, appeals to asylum decisions have to be submitted in the language of the host country. The Asylum Procedures Directive¹⁸ requires that Member States provide appellants with the services of an interpreter free of charge "for submitting their case to the competent authorities whenever necessary".

In four countries (Finland, Hungary, Latvia and Poland), asylum seekers were keen to highlight that they were allowed to submit the appeal in another language. Except for Hungary where they reported using several

languages, in these countries, appeals were submitted in languages commonly spoken, such as English or Russian. In Poland, asylum seekers reported some flexibility allowing asylum seekers to submit brief appeal letters in Russian language in order to meet the 14 days deadline, which is integrated with the submission of supporting documents later. In Latvia, among the two respondents who had lodged an appeal, one could successfully lodge it in Russian, while the second stated that he was asked to present it in Latvian.

More flexibility seems to exist with regards to supporting documents. In Austria, Cyprus, Luxembourg, Poland, Portugal and Sweden, some respondents mentioned that they could present supporting documents in other languages. They were under the understanding that these would be considered by the appeals body – which this research could not systematically verify. In a number of countries, social workers or lawyers are reported to assist asylum seekers with the translation of supporting documents.

The protocol of the eligibility interview is normally one of the main documents on which the asylum decision is based. It is therefore important for asylum seekers or their lawyers to get access to it. In Romania, asylum seekers requested that the protocol be shared immediately after the eligibility interview and not at a later stage with the decision as is currently the case:

"We would like to receive a copy of the interview notes to show to somebody who speaks Romanian and check if the notes corresponded to what we said." (Afghan, male, Romania)

In Poland, Romania and Spain, respondents shared their difficulties in obtaining documents they were requested to submit in order to support their claim. They indicated that within the limited time available it is not possible to procure the requested documents from their country of origin or that requested materials are not available.

In Germany, one focus group welcomed the fact that they could submit the appeal in the reception facility in which they were staying. By contrast, in one country, Greece, asylum seekers mentioned serious access problems to the Aliens Directorate of Athens, where they are required to appear in person to lodge an appeal. Several asylum seekers reported waiting without success in order to be allowed to enter the building and submit their appeal. One respondent described such hardship in the following manner:

¹⁸ Article 10.2 read in conjunction with Article 10.1(b).

*"I went there two times and after I did not go again. I could not enter. I do not want to go again. I hated that."
(Somali, male, Greece)*

Costs other than lawyers' fees (which are dealt with below in Chapter 6) were rarely mentioned as a significant obstacle. An example relates to the costs for translating supporting documents, raised by applicants in Romania and Germany, particularly when certified translations of official documents are required:

"It was not easy to provide the documents in German. We had to find an official translator which was very difficult and moreover he charged us a lot." (Iraq, female, Germany)

To conclude, the FRA is of the view that given the often very short timelines to lodge an appeal, the procedure should be made as simple as possible. Practical measures to consider could include the possibility to file an appeal directly at the reception centre or apply more flexibility as regards the language in which the appeal and/or supporting documents are to be submitted.

6. Legal assistance

Asylum Procedures Directive

Article 15.2

In the event of a negative decision by a determining authority, Member States shall ensure that free legal assistance and/or representation be granted on request, subject to the provisions of paragraph 3.

The right to free legal assistance and representation is set forth in Article 15 of the Asylum Procedures Directive. The current wording of the directive allows for a number of exceptions, which limit this right in practice. For example, Member States can provide free legal assistance and/or representation only “if the appeal or review is likely to succeed” (Article 15.3(d)). The European Commission has suggested several amendments to Article 15, including a reduction of the exceptions allowed for under paragraph 3.¹⁹

This chapter describes the experiences of asylum seekers relating to free legal assistance to prepare and submit the appeal. It focuses on five issues, namely: the central role of lawyers in the appeals process; information on legal assistance; the availability of legal assistance; satisfaction with lawyers; and language difficulties encountered.

The central role of lawyers

Lawyers are seen by asylum seekers as the experts. They are considered as essential. Without them, asylum seekers are lost in a procedure they do not understand, due to language difficulties as well as its complexity:

*“Lawyers must be far more active in their approach. We are like newborn babies and the lawyer is our mother.”
(Syrian, male, Netherlands)*

It is, therefore, not surprising that the main concern for respondents after receiving a negative decision is to find a competent and reliable lawyer who assists them to lodge an appeal, as illustrated by the following respondent:

*“In our opinion, receiving a decision only in Hungarian makes it impossible for the asylum seekers to write a good appeal against it without help of a lawyer.”
(Nigerian, male, Hungary)*

Lawyers were often perceived as working on their own, without any or only limited dialogue with the asylum seeker. For example:

“I did not even know I had a lawyer. He did not come to meet me and he did not communicate with me. He received my documents from someone and started working.” (male, Lithuania)

Respondents in different countries explained that lawyers follow all of the developments of the procedure, only contacting the applicants at times when their action is required or to communicate the outcome of the process. A concrete illustration of this situation is reflected in the description of asylum seekers in Lithuania and Poland, whereby some lawyers ask full power of attorney by making them sign blank papers.

Information on legal assistance

Many asylum seekers complained about the little information they received from the authorities on how to access legal assistance after having received a negative decision. In half of the EU Member States, none of the asylum seekers mentioned having obtained information from the authorities on where to find legal assistance following the rejection of their claim. In general, responses on who assisted asylum seekers do find a lawyer were rather homogenous within each country. These are illustrated in Figure 4.

In Belgium and Luxembourg, most respondents indicated that they already had a lawyer during the procedure before the asylum authority. Therefore, they did not have to look for one when they were notified that their claim was rejected. However, in most other countries, respondents usually sought legal assistance only when they learnt about the rejection of their claim.

According to information provided to the FRA by national asylum authorities, half of the European Union countries have separate leaflets or other information material on where to access legal advice, including: Austria, Belgium, the Czech Republic, Denmark, France, Hungary, Ireland, Lithuania, the Netherlands, Poland, Slovenia and the UK. Nevertheless, only in Denmark, Finland, Slovenia, Sweden and the UK, most asylum seekers remembered receiving names of lawyers from the authorities.

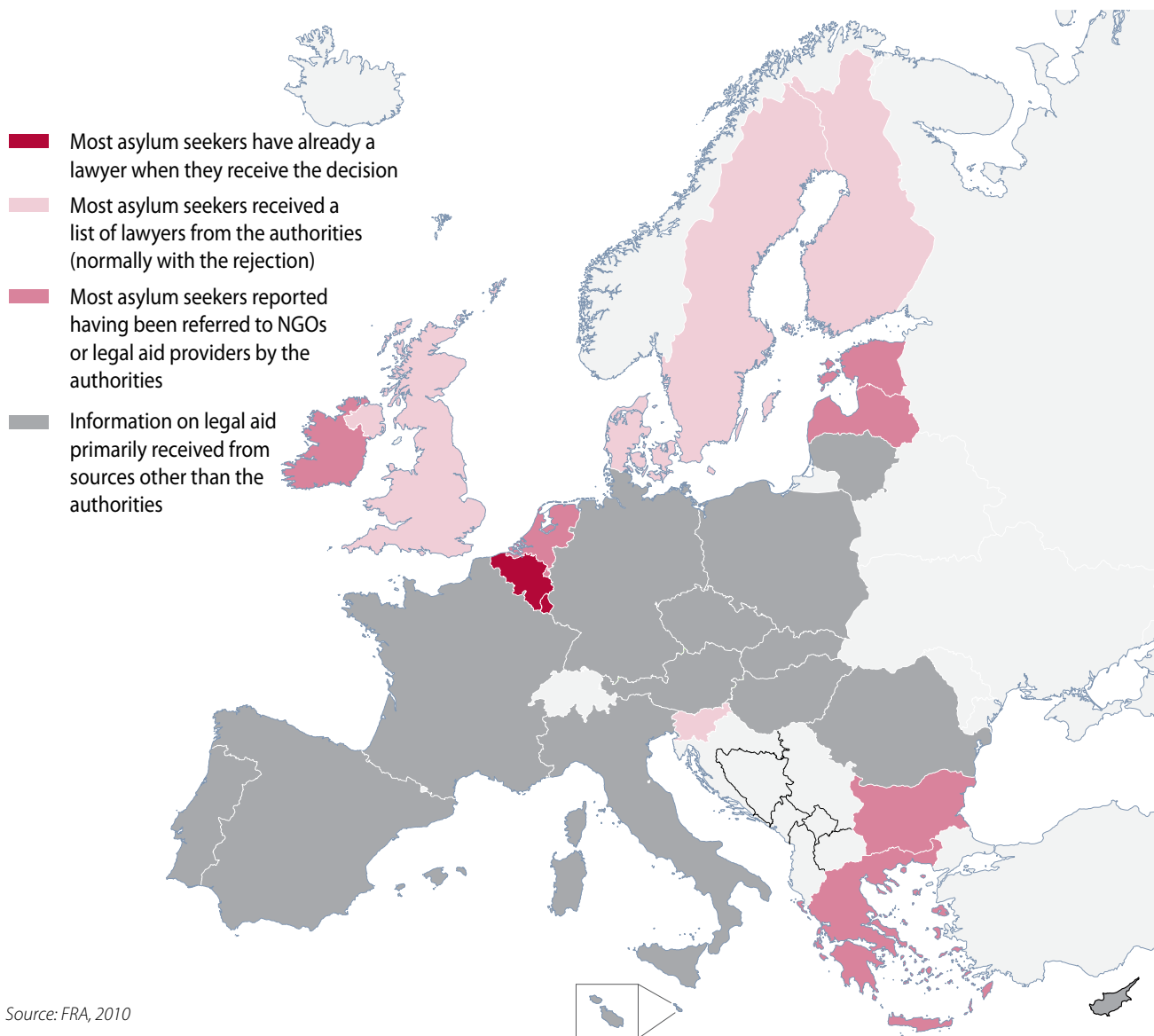
*“The police gave me a paper with a list of lawyers.”
(Iraq, male, Finland)*

“They [the authorities] give you a list of lawyers [...]. I chose one.” (Democratic Republic of the Congo, male, Denmark)

In Bulgaria, Estonia, Ireland, Latvia and the Netherlands, several asylum seekers mentioned that the authorities had provided them with information on how to find legal

¹⁹ See European Commission, COM(2009) 554 final, Brussels, 21 October 2009, amendments to Article 15 (new Article 18).

Figure 4: Referral to a lawyer, EU27



Source: FRA, 2010

aid. In Greece, all asylum seekers were systematically referred to the main NGO providing legal assistance – the Greek Council for Refugees.

It is primarily friends, relatives, persons from within the community or social workers from NGOs or reception facility staff who advise asylum seekers what to do next or where to go upon receipt of a negative decision. Sometimes, conflicting information is provided and asylum seekers are sent from one place to another.

"I called Krakow [...] for assistance, but there I was told to turn to Debak [the reception centre]. Debak redirected me to Bielany and told me that an appeal will be prepared for me there and here they redirected me once again to Debak." (Chechen from the Russian Federation, male, Poland)

In Belgium and France, experiences varied depending on where asylum seekers were hosted. In Belgium, for example, asylum seekers living in the community and, in particular, those in hotels, appeared to have much less information compared with those staying in reception centres. In France, during one of the focus groups, respondents hosted in a reception facility for asylum seekers (*Centre d'accueil pour demandeurs d'asile*) were so well informed compared with other participants that they provided extensive practical guidance on legal aid to asylum seekers counselled by the reception platforms (*plate-formes d'accueil*).²⁰

²⁰ These are facilities where new applicants are provided with social and legal counselling at an early stage of the asylum procedure, but not necessarily with accommodation.

In the view of the FRA, information on where to find legal assistance should normally be provided at the beginning of the asylum procedure. In addition, as a good practice, negative asylum decisions should include information on where to find legal assistance in a language the asylum seeker understands and, where feasible, have contact details of lawyers providing free legal assistance attached to it.

Availability of free legal assistance

The majority of respondents who had lodged an appeal had written it with the help of lawyers. Given that many asylum seekers cannot afford a private lawyer, this could in principle be seen as an indication that possibilities of accessing free legal assistance exist in most countries of the European Union. This first impression is, nonetheless, mitigated by two obstacles raised by respondents in different countries – limited availability of free legal assistance and time pressure.

In at least four countries of the EU27, free legal assistance appears to be limited when compared to existing needs. In Austria, Cyprus, France and Hungary several applicants reported having written the appeal submission on their own with little or no help from lawyers. In Cyprus, applicants pointed to the lack of legal aid for asylum seekers:

“One thing we know is that every lawyer here asks for money. Everything we do which needs legal assistance, you have to pay for.” (Central Africa, female, Cyprus)

In Austria and France, NGOs advised asylum seekers on how to submit an appeal, which some then submitted on their own. In Hungary, applicants noted that the capacity of NGOs is stretched, mentioning in one case that the only lawyer working for free in a reception facility had to support 500 people.

In addition, based on the responses received, in some countries it appears that free legal assistance is more difficult to access in rural or remote areas, where asylum seekers are frequently hosted. In Austria, for example, asylum seekers in cities reported fewer obstacles than those in the provinces in accessing legal assistance. In a remote reception facility in Romania (Radauti), the immigration authorities assisted asylum seekers in preparing the appeal.

A second obstacle that emerged in the asylum-seeker experiences relates to the short deadlines for submitting an appeal. Several respondents in Central Europe raised this issue as they relied primarily on the legal assistance provided by lawyers, visiting at regular intervals the reception centre in which the asylum seekers are accommodated. In the UK, some respondents reported

that lawyers are selective and do not accept all applicants. It becomes therefore difficult to find a solicitor who agrees to take on the case within the short time limit available to submit an appeal.

“I went to a solicitor after my claim was rejected, but he refused to take my case, and suggested that I find another solicitor. But how was I going to find one to do everything for me in just five days?” (Zimbabwe, male, UK)

In Slovakia, asylum seekers pointed to a few instances where after the notification of a negative decision applicants were immediately moved from the asylum centre to the detention centre for irregular migrants. In detention centres, legal advice and legal aid are not easily accessible, thus making the submission of an appeal more difficult.

Satisfaction with lawyers

Free legal assistance (including legal advice, counselling and support to file an appeal) is normally provided by specialised NGOs working with refugees and, in Lithuania, by a private company contracted for this purpose by the state.

By contrast, legal representation before the appellate body is typically undertaken by professional lawyers. These lawyers are often paid through the general state-funded programme for destitute people, where there is no guarantee that the lawyer will have expertise in refugee law.

The level of satisfaction with their lawyers varied considerably among the respondents. Most respondents were neutral or positive, as illustrated by the following quote:

“She was very nice and good.” (South Eastern Europe, female, Luxembourg)

At the same time, however, many other respondents indicated a lack of trust in their lawyer or otherwise referred to negative experiences. In the following paragraphs, some of the concerns raised are outlined.

In a number of countries, asylum seekers repeatedly expressed concern about the qualification or the commitment of the lawyers assigned to them and reported delays in the assignment of a lawyer (France and Portugal). In Spain, several asylum seekers living in the regions had never met their Madrid-based lawyers, while in France the lawyer was frequently seen for the first time at the appeal hearing. In Luxembourg, some applicants wondered whether lawyers were representing them or the state, since the lawyers are paid through legal assistance funds by the state. In

Romania and Slovakia, some asylum seekers perceived delays in their procedures to be the result of the lawyer's inefficiency.

Nevertheless, concerns with lawyers were also reported in those countries where legal aid is provided by specialised NGOs. For example, in Bulgaria, some asylum seekers disliked the lack of continuity in the person who followed their case.

In two countries – the Czech Republic and Romania – as well as in one province in Austria, asylum seekers reported dissatisfaction with the fact that the lawyers submit only standardised appeals. In Romania, one asylum seeker stated that it is a one-page appeal, drafted with the copy-paste method and simply replacing the name of the applicant.

With the exception of Belgium, Denmark, Finland, Germany, Luxembourg and Slovenia, respondents felt that they have limited or no choice in selecting their lawyers. In Austria and Poland, the choice was felt to exist in the capital city, but not in rural areas. Often, asylum seekers have to rely on the only lawyer who regularly visits the reception facility, or they can at best choose between different NGOs providing legal services. In general, female asylum seekers did not express concerns about the fact that they could not choose a female lawyer. In Sweden, however, asylum seekers reported that they can always choose between a male or a female lawyer. In light of possible gender-based persecution claims, this appears as a good practice.

Frequently, asylum seekers wished they had the means to hire a private lawyer for their case. Private lawyers are believed to have a higher success rate than NGO or state lawyers, who are not taken seriously by the authorities and the courts, according to the view of some asylum seekers. The research findings do, nonetheless, not necessarily corroborate this view. While, indeed, some applicants who had a private lawyer were relatively satisfied, other asylum seekers in countries such as Austria, Bulgaria, Belgium, the Czech Republic and Romania reported bad experiences, including having paid private lawyers who never provided any help or just delayed the process.

Language barriers

In most countries there seems to be a structural problem regarding the communication between the asylum seeker and his or her lawyer. Only in a few countries, asylum seekers expressed satisfaction about the way the communication with their legal representatives is organised. This was the case in Finland where asylum seekers appreciated the presence of professional interpreters. In Denmark, Ireland, the Netherlands and

Sweden, respondents reported that interpreters are in most cases provided by the lawyers.

In all of the other EU Member States, interpretation is undertaken by available NGO or reception facility staff, organised by the asylum seeker or resolved in an ad hoc manner. In three countries (Belgium, the Czech Republic, and Slovenia), asylum seekers reported having used body language to communicate with their lawyers.

"The lawyer was writing, and I was speaking with hands and legs, and in Serbian, just to enable the communication." (South Eastern Europe, male, Slovenia)

It is therefore not surprising that in 10 countries²¹ asylum seekers listed language barriers in communicating with lawyers among one of the main obstacles faced in the submission of an appeal.

In other EU Member States, asylum seekers reported that they either do not receive a copy of the appeal submission (Belgium, Luxembourg, Sweden) or they receive it, but do not understand its content as it is not systematically translated for them by the lawyer (Austria, Ireland, Lithuania, Luxembourg, Poland, Slovakia).

FRA Opinion

The right to be assisted free of charge by a lawyer is a precondition to ensure effective access to justice, particularly in light of the complexity of asylum procedures. Such a right should therefore not be subject to any limitations, except for a means test and to modalities for processing requests, which are necessary to ensure an effective administration of the mechanism to provide free legal aid. The Council and the European Parliament are therefore encouraged to support the amendments proposed by the European Commission to Article 15 of the Asylum Procedures Directive.

In addition, the capacity to provide free legal assistance should be re-assessed in each Member State in light of the actual needs for it, so as to ensure that the right to free legal assistance is not only available in theory, but also accessible in practice. When discussing funding for legal aid programmes, Member States as well as legal aid providers are encouraged to include funds for interpretation in order to enable communication between the asylum seeker and his or her lawyer.

²¹ These countries included Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Ireland, Poland, Portugal, Romania and Slovakia.

7. Hearing

Charter of Fundamental Rights of the European Union

Article 47.2

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

The Asylum Procedures Directive does not require that appellate bodies hear the asylum seeker or his or her lawyer. By contrast, an entitlement to a hearing is set forth in Article 47.2 of the Charter of Fundamental Rights of the European Union. According to the explanations to the text of the draft Charter, Article 47.2 is not limited to criminal and civil law proceedings as Article 6 of the European Convention on Human Rights (ECHR),²² thus suggesting that it should also apply to asylum procedures. It will be up to the Court of Justice of the European Union (CJUE; previously European Court of Justice, ECJ), which is the final arbiter of European Union law, to determine this.

While excluding the application of the guarantees included in Article 6 of the ECHR to decisions regarding the entry, stay and deportation of aliens,²³ the European Court of Human Rights (ECtHR) has interpreted Article 13 of the ECHR to require an “independent and rigorous scrutiny” of claims under Article 3.²⁴ The review must look at the substance of the claim.²⁵ As suggested by the CJUE²⁶ and repeatedly stressed by UNHCR, it must include both a review of facts and law.²⁷ Given that in

asylum claims, the individual testimony of the applicant is in many cases the main and sometimes only source of evidence, it is difficult to imagine how the facts of the case can be reviewed without hearing the applicant.

Although none of the European Union countries exclude the possibility for the appeals body to hear the applicant, practices in Member States vary considerably. According to the UNHCR Study, only in six of the 12 countries surveyed by the study the applicant is normally called for a hearing.²⁸

Only a relatively small number of asylum seekers covered by this FRA research had attended an appeal hearing, mainly in Belgium, Bulgaria, the Czech Republic, Denmark, Hungary, Ireland, the Netherlands, Slovakia and Romania. In four countries – Cyprus, Estonia, Latvia and Luxembourg²⁹ – none had been at an appeal hearing. In the remaining 14 EU Member States, the number of those who had attended an appeal hearing varied between one and five asylum seekers. In Belgium, the Czech Republic and Slovakia, some asylum seekers reported having been discouraged by their lawyers to appear at the hearing.

Long waiting times in order to be called for a hearing were raised by respondents in Greece and Spain. In Romania, some applicants experienced that their hearings were postponed several times for one month without them being informed about the reasons.

Travel costs to attend the hearing were reported to be generally covered by the state; in a few cases, however, the applicants had to bear the costs themselves, as reported in Bulgaria, the Czech Republic, Romania and Spain. In the UK, asylum seekers noted that in principle the costs are borne by the state, but not all asylum seekers know about this. NGOs were reported to cover the costs in Estonia, France, Lithuania and Slovakia. In the latter country, the state only covers the costs of those asylum seekers who are hosted in centres.

22 See note from the Praesidium of the Convention, *Draft Charter of Fundamental Rights of the European Union – Text of the explanations relating to the complete text of the Charter as set out in CHARTE 4487/00 CONVENT 50*, 11 October 2000, Convent 49, p. 50.

23 ECtHR, *Maaouia v. France*, No. 39652/98, 5 October 2000, paragraphs 33-41.

24 ECtHR, *Jabari v. Turkey*, No. 40035/98, 11 July 2000, paragraph 50; ECtHR, *Baysakov and Others v. Ukraine*, No. 54131/08, 18 February 2010, paragraph 71.

25 ECtHR, *Jabari v. Turkey*, No. 40035/98, 11 July 2000, paragraphs 48-49.

26 See CJUE, *Dörr and Ünal*, C-136/03, 2 June 2005, paragraphs 55 and 57, available at: www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62003J0136:EN:HTML relating to the interpretation of Article 9(1) of Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health. The Court concluded that an exhaustive examination of all the facts and circumstances is required by the appeal authority. See also CJUE, *Wilson v. Ordre*, C-506/04, 19 September 2006, paragraph 62 concerning Article 9 of Council Directive 98/5/EC to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained available at: www.curia.europa.eu/jurisp/cgi-bin/gettext.pl?where=&lang=en&num=79939080C19040506&doc=T&ouvert=T&seance=ARRET.

27 See UNHCR, *Global Consultations on International Protection/ Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, paragraphs 41 and 43, at: www.unhcr.org/refworld/docid/3b36f2fca.html. In this vein, the proposal for a recast

Asylum Procedures Directive suggests the addition of a paragraph providing that the review should include a full examination of both facts and points of law; see European Commission Communication COM(2009) 554 final, 21 Oct. 2009, new Article 41.3.

28 This includes Bulgaria, the Czech Republic, Germany, Italy, Spain and the UK. In Belgium and France, UNHCR reports that although normally a hearing is conducted, this is not done systematically. In Finland and Slovenia hearings are normally not conducted and in Greece, the applicant may not appear in person before the Council of State, but may be represented by a lawyer. See UNHCR Detailed Research, pp. 470-1.

29 Regarding Luxembourg, appeals before the Luxembourg *Tribunal Administratif* are normally conducted in a written procedure and appellants are obliged to be represented by a lawyer at the hearing. See the information provided on the official website of the judiciary at: www.justice.public.lu/fr/organisation-justice/juridictions-administratives/procedure-recours/index.html.

In most cases, respondents were accompanied by their lawyers at the hearing, although a few asylum seekers in the Czech Republic, Poland and Portugal went to the hearing on their own. In the Czech Republic and Portugal, a small number of respondents indicated that the lawyers assigned to them did not appear at the hearing:

"The lawyer didn't show up and the judges [...] they talked amongst themselves and that was it! And I had no translation and nobody asked me anything." (female, Portugal)

Attendance at hearings is for many applicants intimidating, stressful and frustrating. In several countries, asylum seekers felt either as spectators or were otherwise led hand-held through the process by lawyers who instructed them when to speak and what to say, with occasionally little explanation.

"I was simply there but I did not say a single word. They call your family name and they say this and this is the decision of the court." (Chechen, female, Belgium)

In some cases, hearings where the fate of asylum seekers was going to be decided were perceived as disappointingly short (Belgium, Bulgaria and Lithuania). In other cases, applicants were advised by lawyers not to show any emotions, as this would negatively affect their claim.

"They say don't cry, don't show emotions. The judge will not listen if you cry." (East African, female, Ireland)

Although only a limited number of respondents had attended an appeal hearing, it appears that their role at the hearing varied considerably from country to country. In Austria and Hungary, asylum seekers found it important to stress that during the hearing they could present the reasons for not being able to return to their home country. In Ireland, Poland or the UK, respondents were only asked to reply to specific questions, whereas in a third group of countries – including Germany, Slovenia and Spain – respondents said not having spoken at all.

While normally interpreters are available at the second instance hearing, in three cases (Portugal, Slovenia and Spain) a hearing was reportedly held without interpretation, although the applicants did not speak the language in which the proceedings were held, or spoke it only to a very limited degree. In Poland, an Urdu-speaking applicant reported having been provided interpretation in Hindi and could only follow the process with difficulty. In Bulgaria interpretation was allegedly done in Arabic for Kurdish women from Iraq who did not master this language. By contrast, a good practice was reported from Austria, where at the end of the hearing, the full protocol is read back to the applicant with the help of an interpreter.

In two cases, female applicants expressed fear that their personal stories would become known in their communities. A Chechen applicant in France was worried that Chechen men were present at the hearing:

"I felt very bad, because there were four young men who were Chechen and I didn't want to tell many personal things. I didn't tell half of my story." (Chechen, female, France)

Similarly, in Ireland, a woman from Central Africa feared that the interpreter, who is a member of the same community, would not respect the confidentiality oath and inform the community about her personal story.

FRA Opinion

Appellate bodies in Member States are encouraged to consider holding a hearing in the presence of the applicant whenever the facts of the case are disputed. When the applicant is heard, this should be done in an atmosphere of trust and confidentiality, so as to support the asylum seeker to speak about his or her personal experiences. Travel costs to attend hearings should be covered by public funds.

8. Length of asylum procedures

Asylum Procedures Directive

Article 23.2

Member States shall ensure that such a procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

Since the Tampere Conclusion in 1999, EU Member States have committed themselves to work towards the creation of a Common European Asylum System that should include common standards for fair and efficient asylum procedures.³⁰ Asylum procedures are considered efficient when they are concluded in a reasonable time. In this regard, the Asylum Procedures Directive imposes a duty on Member States to conclude the procedure as soon as possible (Article 23.2). In its recast proposal, the European Commission suggests to introduce a six-month deadline for processing an application at first instance.³¹

Although the research did not intend to review the length of asylum procedures, many respondents raised this issue, sometimes highlighting that they are not informed about the state of their claim.³² Asylum procedures are often still perceived as being too long, as illustrated by the following statement:

“The European Union should be aware of the fact that asylum applications last sometimes for several years. The Union should understand the severe consequences this fact has for the refugees concerned.”
(Chechen, male, Belgium)

By contrast, some respondents questioned whether sometimes authorities take the necessary time to review a case. As an illustration, in Slovakia, the issue was raised by respondents that the authorities were putting more emphasis on meeting the three-month time limit foreseen by law than investigating and evaluating each case in a thorough manner. In Belgium, one applicant expressed surprise that he received a negative decision within nine days.

In all focus groups held with asylum seekers who had received a negative decision by the asylum authority, respondents were individually asked how long they had been waiting for it. While in the majority of cases the time limit did not exceed six months, one respondent out of 10 reported that it took one year or more from the moment they submitted an asylum claim until a decision by the asylum authority was received.³³

Prior to the focus group discussions, individual information was collected from each asylum seeker, which included the time that the person had been in the asylum procedure. One out of five persons interviewed by the FRA in the 27 countries indicated having been in the asylum procedure for over two years (174 persons out of a total of 877),³⁴ the majority of whom were in appeals procedures.

The FRA considers that asylum procedures should not become protracted and therefore welcomes the suggestions made by the European Commission in the proposed recast Asylum Procedures Directive to establish time limits. Sufficient resources should be invested upfront, in order to enable asylum authorities to make decisions based on sound knowledge of the facts and fully respecting the necessary procedural guarantees. A thorough investigation of the facts by the asylum authorities can reduce the need for lengthy appeals procedures.

30 Tampere European Council, Presidency Conclusions, 15–16 October 1999, paragraph 14. Most recently, this commitment has been reiterated in the Stockholm Programme – An open and secure Europe serving and protecting the citizens, Brussels, Council of the European Union, 2009, available online at: www.se2009.eu/polopoly_fs/1.26419!menu/standard/file/Klar_Stockholmsprogram.pdf.

31 See European Commission COM(2009) 554 final, amendments to Article 23.3 (new Article 27.3).

32 See the other report by the FRA, *The duty to inform applicants on the asylum procedure: The asylum-seeker perspective*, September 2010, Chapter 2.

33 This concerned some 61 asylum seekers in Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, France, Finland, Greece, Ireland, Luxembourg, Malta, Poland and Spain. The total number of asylum seekers who had received a negative decision by the asylum authority amounted to 558 persons.

34 This includes a few cases in which the claim was pending at third instance or before the Constitutional Court.

Annex 1: Target group and methodology

This report is mainly based on information collected through primary research. This includes focus group discussions and individual interviews with asylum seekers, as well as a brief closed questionnaire³⁵ submitted to national asylum authorities. National asylum laws and other existing reports³⁶ have been used to contextualise the information collected.

The field research with asylum seekers consisted of focus groups and semi-structured interviews. A total of 877 asylum seekers have been interviewed in 27 European Union Member States, either individually or as part of a focus group. A total of 142 focus groups and 33 individual interviews were carried out. Individual interviews were undertaken in those cases where it was not possible to identify a sufficient number of homogenous respondents to form a focus group, primarily in countries having a lower number of asylum applications.

35 The questionnaire is available for download online at the FRA website at: fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub_asylum-seekers_en.htm.

36 This includes the reports by the Intergovernmental consultations on migration, asylum and refugees (IGC) *Asylum Procedures, Report on Policies and Practices in IGC Participating States, 2009* and by UNHCR, *Improving asylum procedures: Comparative analysis and recommendations for law and practice, a UNHCR research project on the application of key provisions of the Asylum Procedures Directive in selected Member States*, March 2010.

Men and women were interviewed separately.

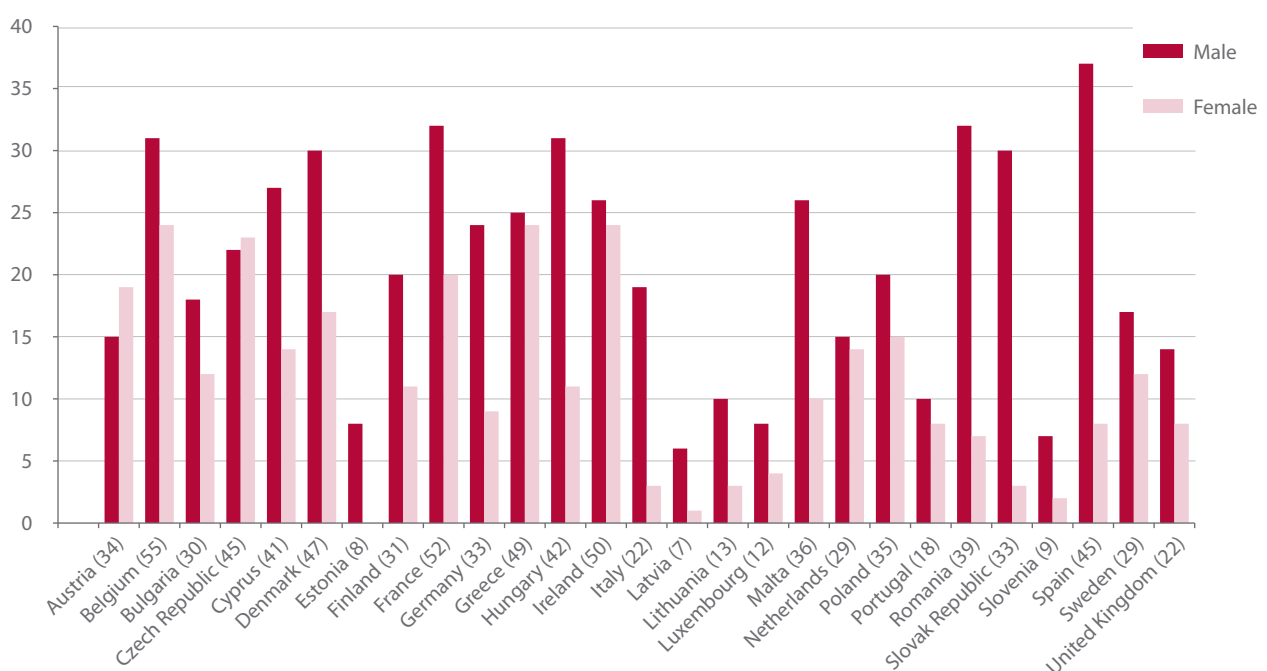
Men were not allowed to listen in focus groups carried out with women and vice versa. In total, 562 men and 315 women were interviewed (see Figure A1).

No child was included when forming the focus groups; in two cases, however, it turned out when conducting the discussion that the persons were below the age of 18 years.

Most of the asylum seekers interviewed were staying in reception facilities, including closed or semi-open facilities for newcomers in admissibility procedures as well as reception centres for asylum seekers run by non-governmental organisations (NGOs), the state or privately. However, approximately one fourth of the respondents were living in hotels, pensions or otherwise scattered in the community (see Figure A2).

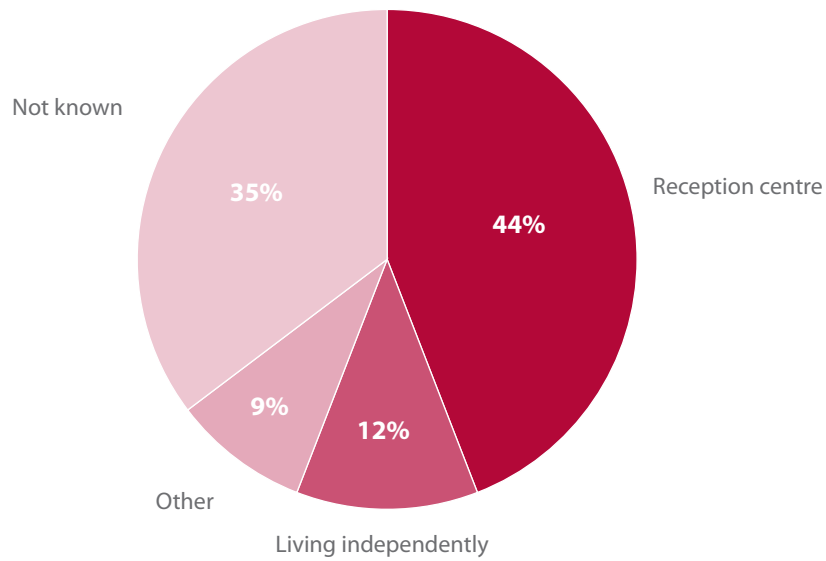
A few respondents were homeless, including a pregnant woman who was sleeping in a park in Athens. In order to have a sufficient number of respondents in Estonia and Malta, focus groups took place in detention facilities for irregular migrants (in the facilities of Harku and Safi, respectively). However, the level of confidentiality in these facilities was low as authorities were present or other asylum seekers could listen to what was said. Asylum seekers in fast-track detention facilities in the UK have not been covered by this research, as it was not deemed possible to create the necessary confidential setting for the discussion.

Figure A1: Number of interviewed asylum seekers, by country and sex



Source: FRA, 2010

Figure A2: Interviewed asylum seekers, by type of accommodation at the moment of interview (%)

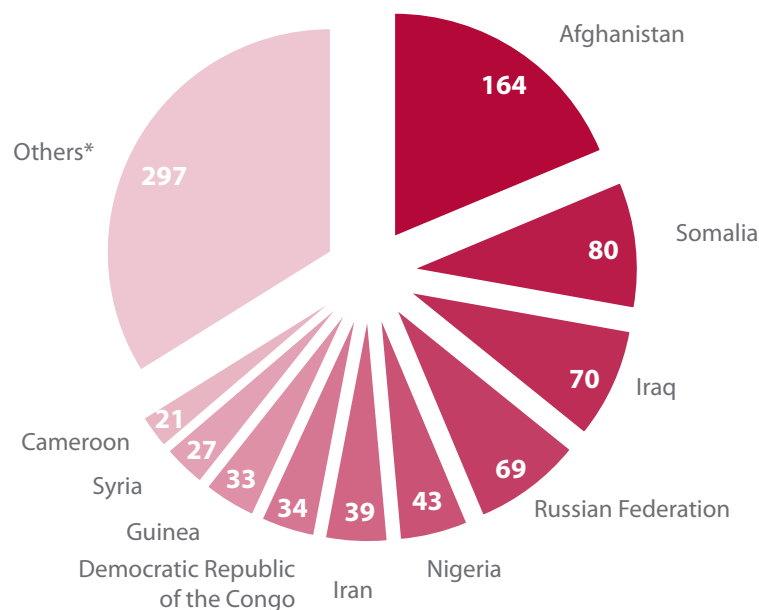


Source: FRA, 2010

With very few exceptions each focus group had a homogenous geographical and language background. The focus groups were initially selected among seven broad population groups: Arabic-speaking applicants; Afghanistan, Iran, and Pakistan; Russian Federation and other Commonwealth of Independent States (CIS) countries; English-speaking African countries; French-speaking African countries; Kurdish-speaking applicants and applicants from the Balkans.

However, in the course of the field research other nationalities (for example, from Asia or Latin America) had to be included in order to meet the minimum number of asylum seekers in each country. Most asylum seekers interviewed came from Afghanistan, the Russian Federation, Iraq and Somalia, although in total 65 different nationalities were covered by the research (see Figure A3 for a breakdown of the 10 most important nationalities).

Figure A3: Number of interviewed asylum seekers, by nationality



Note: * This includes seven ethnic Kurds of whom the nationality was unknown.

Source: FRA, 2010

Separate focus groups and interviews were planned with newly arrived asylum seekers, as well as with asylum seekers who had received a negative first instance decision by the asylum agency and were thus in the asylum procedure for a longer period of time. In most cases, newly arrived asylum seekers had not yet received a negative decision, although some had been notified that their application was inadmissible, including when another European country was responsible to examine the claim (Dublin II). The information included in this report originates primarily from asylum seekers who have received a negative decision, including at the admissibility stage as the questions asked were not relevant for several among newly arrived applicants.

Researchers were also asked to collect information on how long respondents had been in the procedure and on the type of procedure – Dublin II, accelerated or regular. However, as the type of procedure could not be verified or often remained unknown to the respondents themselves, it was not included in the analysis. Figure A4 provides an overview of the time respondents were in the procedure.

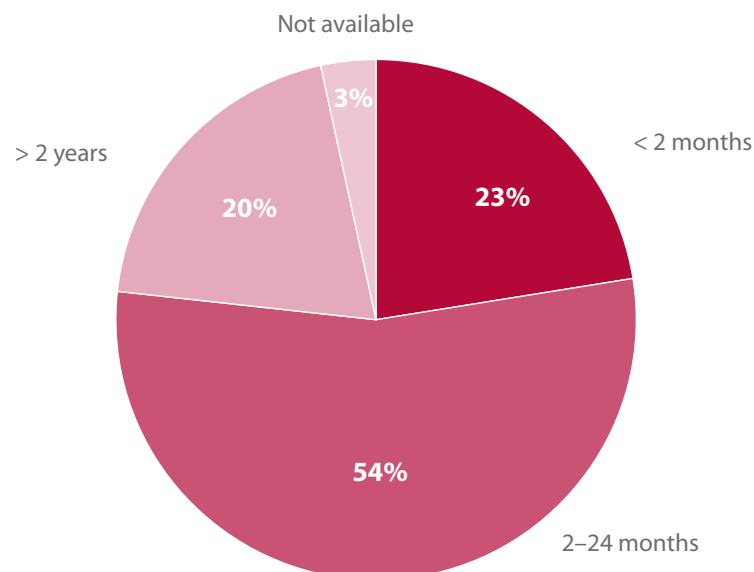
Asylum seekers were selected for the focus groups or the interviews primarily through the help of social workers employed by NGOs or working in reception facilities for asylum seekers. In order to establish an atmosphere of trust, no government officials, legal counsellor, lawyers or other unauthorised persons were present in the focus groups, except for the detention facilities for irregular migrants in Estonia and Malta. Only social workers assisted in some focus groups, mainly at the beginning, to help establish the level of confidence for an open discussion.

The field research was undertaken by the RAXEN network of the FRA,³⁷ with the exception of the Netherlands where it was carried out by the University of Nijmegen. Guidelines have been developed to ensure consistency during the research on which interviewers were trained in February 2010.³⁸ All focus groups or individual interviews were approved in advance by the FRA. The field research was undertaken between March and June 2010. The FRA monitored the implementation of the field research by observing focus group discussions held in Austria and Greece.³⁹

The majority of the focus group discussions were carried out in a confidential setting, with no or limited interruptions and, based on the assessment of the interviewers, with a low or medium level of fear. Most focus groups or interviews were carried out with the help of interpreters, usually professional interpreters or those who work for NGOs. To avoid the perception that the interviews are linked with the national asylum authorities, the FRA research only exceptionally called on the asylum agency's interpreters to help.

37 See the list of national focal points which were responsible to manage the field research at: www.194.30.12.221/fraWebsite/partners_networks/research_partners/raxen/nfp/nfp_en.htm.
 38 The interview guidelines are available online at the FRA website at: fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub_asylum-seekers_en.htm. Due to time considerations, the Dutch and Swedish interviewers could not participate in the training.
 39 The FRA had also arranged to observe focus groups in Malta, including in the detention facility; however, due to the interruption of flights caused by the Icelandic volcano cloud FRA staff could not travel to Malta at the time of the interviews.

Figure A4: Interviewed asylum seekers, by length of procedure (%)



Source: FRA, 2010

In most cases, after a (sometimes relatively long) explanation of the purpose of the research, asylum seekers participated actively in the focus groups and responded to most of the standard questions that were used to guide the discussion (see the questions reproduced following this section). In a few cases,

however, asylum seekers showed disappointment with issues discussed as these were not considered significant compared with the practical problems that they faced in their daily lives such as, for example, those relating to accommodation, health or access to the labour market.

Questions used to guide the discussion in the focus groups

A) Information on asylum procedure

- What information on the asylum procedure did you receive?
 - Which organisation provided such information?
 - Did you verify the information received?
 - When: At what stage of the procedure was information received?
 - Who provided the most useful information?
 - Who did you trust most? Why did you feel you could trust this organisation or person most?
 - Did you receive information leaflets?
 - If so, in what language?
 - If so, how understandable were they? How useful were they for you to find out what will happen? Did they cover all your questions?
- How do **you** think the information on the asylum procedure should have been made available to you?

B) Remedies

Information on how to appeal

- Could you recall how long it took for you to receive the first decision on your asylum claim?
- How did you learn about the rejection of your asylum claim?
 - Did you receive a written communication? If yes, what language was the letter in? Did anybody translate it for you?
 - Were you told of
 - time limits for appeal?
 - where to appeal (appeal body)?
 - how to access legal assistance?
 - If so, was this info (partly) also translated in a language you understand?

Submission of appeal

- Did you have to submit the appeal & supporting documents in the host country language?
 - If so, how did you find help for putting together the appeal?
- How much time did you have to submit the appeal? Was it enough?
- What were the main obstacles (or problems) faced?

Legal assistance

- When rejected, who told you what to do and where to go?
 - Were you assisted by a lawyer to submit the necessary papers?
 - If yes, how did you find a lawyer?
 - Was it easy or difficult?
 - Did you have an influence on who your lawyer is (pay attention to gender)?
 - Who interpreted for you when you discussed with the lawyer?
 - How satisfied were you with your lawyer?

Attending the hearing

- If you were called for a hearing before a tribunal or a court⁴⁰ did you go?
 - Did anybody come with you to the hearing?
 - Were you assisted by a lawyer or an organisation?
 - Who paid for the costs (travel, accommodation)?
 - Did you understand what was said?
 - Were you allowed to speak yourself?

⁴⁰ Please make sure that asylum seekers understand that this does not refer to the asylum interview in first instance, but to the appeals procedure.

Annex 2: Statistics

Table A1: Decisions on asylum applications from Afghanistan, 2009*

Country	First instance decisions	Total positive decisions	Recognition rate** %	Final decisions	Total positive decisions	Recognition rate** %
Belgium	1,245	285	22.9	420	15	3.6
Bulgaria	45	30	66.7	0	0	
Czech Republic	10	10	100.0	5	0	0.0
Denmark	380	210	55.3	75	20	26.7
Germany	1,595	950	59.5	410	235	57.4
Estonia	0	0		0	0	
Ireland	n.a.	n.a.	n.a.	100	25	25.0
Greece	1,600	20	1.3	85	15	17.6
Spain	55	10	18.2	n.a.	n.a.	n.a.
France	360	135	45.8	90	35	38.9
Italy	775	695	89.6	n.a.	n.a.	n.a.
Cyprus	40	0	0.0	10	0	0.0
Latvia	10	0	0.0	0	0	
Lithuania	5	5	100.0	0	0	
Luxembourg	0	0		0	0	
Hungary	320	145	45.3	5	0	0.0
Malta	0	0		0	0	
Netherlands	875	285	32.6	60	30	50.0
Austria	1775	886	49.9	788	368	46.7
Poland	5	5	100.0	0	0	
Portugal	0	0		0	0	
Romania	25	15	60.0	35	20	57.1
Slovenia	5	5	100.0	0	0	
Slovakia	50	45	90.0	0	0	
Finland	190	65	34.2	5	5	100.0
Sweden	1,120	635	56.7	445	115	25.8
United Kingdom	3,535	1,455	41.2	n.a.	n.a.	n.a.

Notes: * Data is rounded to the nearest 5; 0 means less than 3; n.a. = not available.

** The recognition rate corresponds to the proportion of positive first instance or final on appeal decisions out of the total number of decisions in 2009. Positive decisions include the provision of refugee status, subsidiary protection and humanitarian protection (where data is available).

Source: Statistical Office of the European Communities (Eurostat), Data extracted on 20 August 2010; for Austria, communication by Federal Asylum Office on 21 September 2010.

Table A2: Decisions on asylum applications from Iraq, 2009*

Country	First Instance decisions	Total positive decisions	Recognition rate** %	Final Decisions	Total positive decisions	Recognition rate** %
Belgium	1,180	605	51.3	395	30	7.6
Bulgaria	295	200	67.8	35	10	28.6
Czech Republic	5	5	100.0	10	0	0.0
Denmark	210	110	52.4	135	60	44.4
Germany	8,850	5,750	65.0	875	460	52.6
Estonia	0	0		0	0	
Ireland	n.a.	n.a.	n.a.	115	50	43.5
Greece	905	30	3.3	70	15	21.4
Spain	45	35	77.8	n.a.	n.a.	n.a.
France	535	440	82.2	50	20	40.0
Italy	450	355	78.8	n.a.	n.a.	n.a.
Cyprus	165	150	90.9	40	5	12.5
Latvia	0	0		0	0	
Lithuania	0	0		0	0	
Luxembourg	60	50	83.3	0	0	
Hungary	55	35	63.6	5	0	0.0
Malta	5	0	0.0	0	0	
Netherlands	4,350	1,845	42.4	145	45	31.0
Austria	381	291	76.4	42	2	4.8
Poland	30	25	83.3	0	0	
Portugal	0	0		0	0	
Romania	95	80	84.2	70	40	57.1
Slovenia	0	0		0	0	
Slovakia	15	10	66.7	0	0	
Finland	710	370	52.1	10	10	100.0
Sweden	4,230	1,000	23.6	5645	520	9.2
United Kingdom	1,515	290	19.1	n.a.	n.a.	n.a.

Notes: * Data is rounded to the nearest 5; 0 means less than 3; n.a. = not available.

** The recognition rate corresponds to the proportion of positive first instance or final on appeal decisions out of the total number of decisions in 2009. Positive decisions include the provision of refugee status, subsidiary protection and humanitarian protection (where data is available).

Source: Eurostat, Data extracted on 20 August 2010; for Austria, communication by Federal Asylum Office on 21 September 2010.

Table A3: Decisions on asylum applications from Somalia, 2009*

Country	First Instance decisions	Total positive decisions	Recognition rate** %	Final Decisions	Total positive decisions	Recognition rate** %
Belgium	195	45	23.1	65	10	15.3
Bulgaria	5	5	100.0	0	0	
Czech Republic	0	0		0	0	
Denmark	35	20	57.1	5	0	0.0
Germany	225	180	80.0	15	10	66.7
Estonia	0	0		0	0	
Ireland	n.a.	n.a.	n.a.	65	10	15.4
Greece	135	5	3.7	5	0	0.0
Spain	55	5	9.1	n.a.	n.a.	n.a.
France	130	100	76.9	15	5	33.3
Italy	2,540	2,415	95.0	n.a.	n.a.	n.a.
Cyprus	0	0		0	0	
Latvia	0	0		0	0	
Lithuania	0	0		0	0	
Luxembourg	10	5	50.0	0	0	
Hungary	120	115	95.8	0	0	
Malta	1,570	1,445	92.0	50	0	0.0
Netherlands	5,460	3,535	64.7	60	25	41.7
Austria	283	190	67.1	71	29	40.8
Poland	10	10	100.0	0	0	
Portugal	5	5	100.0	0	0	
Romania	5	5	100.0	10	5	50.0
Slovenia	0	0		0	0	
Slovakia	10	10	100.0	0	0	
Finland	965	385	39.9	15	15	100.0
Sweden	5,205	3,530	67.8	1,060	475	44.8
United Kingdom	1,295	625	48.3	n.a.	n.a.	n.a.

Notes: * Data is rounded to the nearest 5; 0 means less than 3; n.a. = not available.

** The recognition rate corresponds to the proportion of positive first instance or final on appeal decisions out of the total number of decisions in 2009. Positive decisions include the provision of refugee status, subsidiary protection and humanitarian protection (where data is available).

Source: Eurostat, Data extracted on 20 August 2010; for Austria, communication by Federal Asylum Office on 21 September 2010.

European Union Agency for Fundamental Rights

Access to effective remedies: The asylum-seeker perspective
Thematic Report

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Article 47 of the Charter of Fundamental Rights of the European Union guarantees the right to an effective remedy to everyone. According to Article 39 of the Asylum Procedures Directive, European Union law requires that asylum seekers shall have the right to request a review of their asylum decision before a court or tribunal. Drawing on evidence from interviews with almost 900 asylum seekers, this report presents asylum-seeker experiences in submitting an appeal against a negative asylum decision. While documenting good practices, it also highlights several obstacles which make it difficult for asylum applicants to access effective remedies.

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